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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 17

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO,

Petitioner,

—against—

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF

Question Presented

Whether a federal district court has jurisdiction, under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959, to enjoin the imposition of requirements which infringe the rights of members of a labor organization to nominate candidates in future elections of the labor organization?

Statement of the Case

1. The Proceedings Below.

Respondents, members of petitioner District No. 1, a local labor organization, bring suit pursuant to Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA"), 29 USC 412, to enjoin the imposition, in regard to future elections of District No. 1, of certain nominations requirements and eligibility requirements which effectively deprive respondents (and many other members of District No. 1 as well) of their rights to nominate candidates in elections of District No. 1.

The issue presented to this Court is whether a federal district court has jurisdiction over such an action.

The requirements which respondents complain of are as follows: first, every member of petitioner District No. 1 is prohibited from nominating any candidate other than himself for any office (Rec. 5) (i.e., he is limited to nominating himself only, and for one office only); second, all members who have not already served as full-time, paid officials of the union are prohibited from nominating themselves for the presidency of District No. 1 (Rec. 6); and third, all members who have not served 180 days of sea time or more during each of two of the three years immediately preceding the nominations are prohibited from nominating themselves for any office whatever (Rec. 5).

The result of these requirements is, of course, that respondents are totally deprived of their right to nomi-

nate candidates (Rec. 8). Respondents are first prohibited from nominating any candidate *other* than themselves, then prohibited from nominating themselves. Many, perhaps most, of respondents' fellow-members are deprived of their rights to the same extent (Rec. 8). And, of course, the overwhelming majority of respondents' fellow members are deprived (along with respondents) of their rights to nominate candidates for the presidency of petitioner District No. 1.

Accordingly, respondents brought suit, on their individual behalf and on behalf of their fellow members similarly situated, seeking to enjoin the carrying out of these requirements and deprivations of right in future elections. Respondents sought (and seek) an order directing petitioner District No. 1 to afford its members a fair opportunity to nominate candidates (Rec. 10) and to compel District No. 1 to afford its members such an opportunity before any future elections are held (Rec. 9-10). From the dismissal of their complaint by the district court for want of jurisdiction (Rec. 116) respondents appealed to the Second Circuit Court of Appeals. That Court unanimously reversed and remanded for further proceedings (Rec. 126). District No. 1 petitioned to this Court from that (non-final) judgment of the Court of Appeals, and this Court granted certiorari (Rec. 132).

Subsequent to the decision of the Second Circuit Court of Appeals, the district court inquired into the merits and issued a preliminary injunction, restraining District No. 1 from carrying out its nominations and eligibility requirements with regard to its 1963 elections, 224 F. Supp. 800. No appeal was taken

from that decision. But District No. 1 has ever since refused to hold an election, and plaintiffs' motion (brought in December 1963) to compel an election is still awaiting decision in the district court.

2. The Structure of the Union.

Petitioner District No. 1 is one of three "districts" comprising a National union, the Marine Engineers Beneficial Association (or MEBA). Until January 1, 1961, MEBA was composed of local unions, one in each port, and these local unions were self-governing, electing their own officers and adopting their own bylaws (Rec. 13-14). On January 1, 1961, local unions were abolished by MEBA and three "districts" were established in their stead. District No. 1 is the largest of these, having some 6000 members (Rec. 12). The officials of National MEBA appointed certain people as officers of District No. 1 and appointed also certain former local union officials to comprise a District Executive Committee to govern it (Rec. 12-14). These appointed officials then "promulgated" a set of bylaws to govern District No. 1 (i.e., they did not submit the bylaws to the membership for approval) (Rec. 14). The "promulgated" bylaws prohibit members from nominating any candidates other than themselves for office in District No. 1 (Rec. 14, 37).

Having been formed in 1961, District No. 1 (petitioner) could legally function without a general election of officers only until 1963 (i.e., for three years). Elections, therefore, were scheduled to be held in the fall of 1963; similarly, National MEBA scheduled its elections for the summer of 1963. On the eve of these

elections, in March 1963, National MEBA held a convention and amended its constitution so as to impose three new eligibility requirements with regard to district offices. The new requirements prohibited any member from being a candidate for the presidency of a district unless he had already been or was a full-time, paid official; they prohibited any member from being a candidate for any other district office unless he had served 180 days of sea time or more on MEBA-contracted vessels during each of two of the previous three years; and they prohibited any member from being a candidate for any district office unless he had been a member of MEBA for five years (Rec. 14-15, 70). The same requirements, together with the requirement of self-nomination, were imposed with regard to National office also (Rec. 43).

This action was brought by respondents some three weeks before ballots were scheduled to be sent to members with regard to the 1963 elections of District No. 1 (Rec. 15). Before bringing suit, respondents attempted to nominate the only candidates the by-laws allowed them to nominate (themselves). Their nominations were rejected by District No. 1's officials. Two of respondents then appealed, but the appeals were denied (Rec. 16-18). This action is brought, however, not to enforce those nominations (of themselves), and still less to protect respondents' rights to be candidates—but rather to protect respondents' and their fellow members' rights *to nominate* candidates (Rec. 10, 19).

Summary of Argument

The "Bill of Rights of Members of Labor Organizations," Title I of the Labor-Management Reporting and Disclosure Act of 1959 (the "LMRDA"), guarantees to every member of a labor organization certain democratic rights. Among these is the equal right "to nominate candidates." Section 102 of that title authorizes any person whose rights under that title have been infringed to bring suit in a federal district court for appropriate injunctive or other relief. The present suit is brought under those provisions, to enjoin the imposition of certain restrictive requirements which infringe the rights of respondents, as members of District No. 1 (a local labor organization), to nominate candidates in District No. 1's elections.

Title I—the "Bill of Rights" title—was added to the original Kennedy-Ervin Labor Reform bill by the Senate, because the Senate was convinced that the bill as presented to it did not provide sufficient protection for union members' democratic rights. The original bill had been drafted with the view that existing remedies in State courts provided adequate *pre*-election relief for union members whose electoral rights were infringed, the drafters of the bill being concerned merely to add a *post*-election procedure, making it possible for a fraudulently conducted election to be upset and a new election held. The original bill thus provided dual or two-fold, "overlapping" relief: it permitted union members, in advance of a union election, to bring suit in State courts to enjoin the imposition of unfair eligibility require-

ments or other infringements of their democratic rights in regard to the future election; and it enabled a district court, upon the post-election suit of the Secretary of Labor, to set aside the results of an election already conducted in which such democratic rights had been infringed.

The *post*-election procedures created by the bill met little opposition in Congress, but the Senate determined that the existing State *pre*-election remedies were not adequate—and that, a federal *pre*-election remedy was necessary. For that reason, it added the "Bill of Rights of Members of Labor Organizations" to the Kennedy-Ervin bill, making it Title I thereof. The "Bill of Rights" provided just such a federal pre-election remedy, to complement the post-election remedy present in what is now Title IV of the LMRDA.

It is apparent that there is some "overlap" between the "Bill of Rights" title (Title I) and Title IV, in the sense that an infringement of one of the rights guaranteed in Title I, which may be enjoined by *pre*-election suit pursuant to that title, may also (assuming it is not enjoined) justify the setting aside of the election results after the election has been completed, pursuant to Title IV. Obviously, there is no contradiction in such "overlap;" rather the pre-election and post-election remedies complement each other.

District No. 1 contends, however, that there is a contradiction, and that union members must not bring suit to enjoin the infringement of their rights but must wait until the union election has been completed, and then seek to have the results set aside. All of

which is analogous to saying that a man must not protect himself against a criminal injury but must wait until the crime has been committed, in the hope that the District Attorney will thereafter bring a "post-crime" prosecution to remedy the injury. Congress did not intend such a ridiculous result; instead Congress explicitly and deliberately authorized union members to bring suit in advance of their union's elections to enjoin the infringement of their democratic rights with regard thereto.

POINT I

A District Court has jurisdiction to enjoin a labor organization from imposing upon its members unreasonably restrictive requirements which infringe the members' rights to nominate candidates in elections of the labor organization.

Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (referred to herein as the "LMRDA"), 29 USC 411(a)(1), guarantees to "every member of a labor organization" the equal right "to nominate candidates . . . subject to reasonable rules and regulations in such organization's constitution and bylaws."[1] Section 102 of the Act, 29 USC 412, authorizes any person whose rights un-

[1] The meaning of the "subject to" clause in Section 101(a)(1) was explained by Senator Cooper, one of the sponsors of the final version of the "Bill of Rights" that ultimately became Title I of the LMRDA, at 105 Cong. Rec. 6722, 105 Cong. Rec. (daily ed.) 6025, NLRB, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, p. 1234. (The latter authority is referred to hereinafter as Leg. Hist. of the LMRDA.) Cf. also *Young* v. *Hayes*, D.D.C. 1961, 195 F. Supp. 911.

der that section (or under any other provision of Title I) have been infringed to bring a civil action in a federal district court for "such relief (including injunctions) as may be appropriate."

The intent of these provisions is clear. The right guaranteed is not a mere right to equality in nominating, but an equal and substantive right to nominate; and the availability of an injunctive remedy for any infringement is explicitly specified.

The applicability of these provisions to the instant case is equally clear. Respondents, members of petitioner District No. 1 (a local labor organization), have been deprived *in toto* of their equal rights to nominate candidates by a network of restrictions upon the act of nomination itself and upon the eligibility of members for nomination. Together, these restrictions effectively prohibit respondents (and many other members of District No. 1) from nominating any candidate at all, for any office at all; and they prohibit virtually all of District No. 1's rank-and-file members (respondents included) from nominating any candidate at all for the chief office in District No. 1, its presidency.

Does it not follow that respondents are "person[s] whose rights secured by the provisions of [Title I of the LMRDA] have been infringed by [a] violation of [that] title," within the meaning of Section 102? And that a federal court therefore has jurisdiction, pursuant to Section 102, to grant the relief prayed for, by enjoining in future elections of District No. 1 the continued imposition of those restrictions that de-

prive the members of their rights to nominate candidates?

If so, then it must follow that the Court of Appeals for the Second Circuit was correct in ruling that the complaint herein alleged a violation of Section 101 (a)(1) and that federal jurisdiction existed under Section 102. For although Section 403 of the LMRDA may foreclose a court in the suit of a member from setting aside the results of an already completed election,[2] no provision of the LMRDA or of any other statute purports to divest the court of jurisdiction to enjoin the infringement of Title I rights in elections yet to be conducted.

POINT II

It was Congress's intention, in adopting a "Bill of Rights of Members of Labor Organizations," to provide federal, pre-election protection for the democratic rights of union members.

When Congress took under consideration the Kennedy-Ervin bill, the State courts were already providing a substantial measure of pre-election relief for infringement of the most important democratic rights of union members. In the debates upon the bill, and especially in the debates upon the proposed "Bill of

[2] 29 USC 483. The last sentence in that section provides that the remedy set forth in Title IV of the LMRDA shall be exclusive "for challenging an election *already conducted*" (emphasis supplied). But existing remedies by private suit with regard to elections yet to be conducted are expressly preserved by that section.

Rights" of union members (added to the bill by amendment as Title I thereof), the issue was raised as to whether Congress should provide a federal pre-election remedy for infringement of those fundamental rights, to supplement the State pre-election remedies already in existence and the federal post-election remedies provided by Title III of the bill (now Title IV of the LMRDA). That issue was resolved in the affirmative. The Senate superimposed a "Bill of Rights," providing a federal pre-election remedy for infringement of important democratic rights, upon the bill as reported to it. It is that federal pre-election remedy which is invoked in the instant action.

Congress's intent to provide a federal, pre-election remedy for the infringement of such fundamental democratic rights as the rights to vote and to nominate candidates is apparent from the plain language of Sections 101(a)(1) and 102 of the LMRDA. It is further apparent from the legislative history of the adoption of these sections and of the "Bill of Rights of Members of Labor Organizations,'" of which they are a part.

1. **The Background in State Law.**

Long before Congress decided to legislate for union democracy, the State courts developed an extensive experience in that field. A key lesson of that experience was the fundamental importance to union members of electoral rights, and of the right to have an election. As Justice Francis Bergan expressed it, ". . . the member denied the right to participate

[in an election] is denied a substantial right which is neither nebulous nor ephemeral."[3]

In the course of their experience in dealing with problems of union democracy, the State courts developed a practice of granting pre-election relief to union members who complained of specific infringements of their democratic rights, such as the denial of the members' rights to nominate candidates or to be candidates for union office. It was recognized that such relief should not wait until the election itself is conducted; that rather, the members are entitled to relief in advance of the election. As summarized by Professor Summers (on the basis of the study of the law of union democracy and election procedures in New York State, initiated by the Governor's Committee on Improper Labor and Management Practices and continued by the New York Department of Labor, pursuant to the instructions of the Legislature[4]), the courts' rationale has been as follows:

> "If members are forcibly prevented from making nominations, or if candidates are wrongfully stricken from the ballot, the election must be a nullity. To postpone the dispute would burden the union with carrying through a useless form."[5]

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[3] *Dusing* v. *Nuzzo*, N.Y. Sup. Ct. Ulster County, 1941, 177 Misc. 35; affd. as modif. 263 App. Div. 59. Cf. also *Irwin* v. *Possehl*, N.Y. Sup. Ct. Bronx County, 1932, 143 Misc. 855, 858; *Maineculf* v. *Robinson*, N.Y. Sup. Ct. Kings County, 1958, 19 Misc. 2d 230; *Di Bucci* v. *Uhrich*, Westchester County, 1959, 21 Misc. 2d 1069; *Beiso* v. *Robilotto*, Albany County, 1960, 26 Misc. 2d 137.

[4] Labor and Management Improper Practices Act, Chapter 451 of the Laws of 1959, Section 2.

[5] Clyde W. Summers, "Judicial Regulation of Union Elections," 70 Yale L.J. 1221, 1244 (1961). As to the study itself, cf. ibid, at 1223, note 12.

While the State courts have been willing and ready to grant pre-election relief to union members whose democratic electoral rights have been infringed, they have been less willing to set aside the results of an election after it has been conducted.[6] The distinction is based upon sound common sense: for the "post-election" remedy of setting the election results aside after the election has been completed may greatly inconvenience the union without helping the members whose rights have been infringed. Only the "pre-election" remedy of correcting the infringement befor the election takes place can provide adequate protection for the members without unduly burdening the union.[7]

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[6] Thus in *Ford* v. *Curran*, N.Y. Sup. Ct., Kings County, 1955, 36 LRRM 2407, 2409, n/o/r, an unsuccessful candidate in a union election brought suit after the election was over to set aside the results on the ground that the incumbent president had used the union newspaper to campaign for re-election. This would have been a sufficient basis for pre-election relief. But the court criticized the plaintiff because she had "made no attempt to have a court issue an injunction restraining the president from these acts," and it denied her post-election relief, saying "A person in her position could not sit back and await the outcome of an election and then come into this Court and get the extreme relief she seeks."

[7] Thus Professor Summers observes, "Lawyers who have been involved in these cases agree that preelection remedies are the only ones of practical value. Correction of defects prior to the voting gives the members that to which they are entitled—a fair and honest election in the first instance. It also protects the union from the instability of an unsettled election and the cost and disruption of a new election. Post-election remedies provide too little protection for the members and too much burden for the union." Clyde W. Summers, "Judicial Regulation of Union Elections," 70 Yale L.J. 1221, 1248 (1961).

2. The Kennedy-Ervin bill.

When Congress came to legislate for union democracy, it did so in the light of the experience of the State courts. Recognizing "the importance of free and democratic union elections,"[8] the Senate Committee sought to take up where the State courts had left off. The bill it submitted to the Senate specifically preserved the pre-election remedies developed by the State courts and sought to add to them a post-election remedy, administration of which it placed in the hands of the Secretary of Labor.[9] Thus it set up a dual protection for union members' democratic rights. As Senator Kennedy expressed it,

> "Prior to the day of an election an individual can sue in a State [court]. The day after an election the Secretary of Labor assumes jurisdiction.[10]

3. The "Bill of Rights of Members of Labor Organizations."

The original bill, therefore, entrusted pre-election remedies to the State courts. Had Congress believed that these State remedies were adequate it would never have added the "Bill of Rights of Members of Labor Organizations" to the bill as Title I thereof. But upon Senator McClellan's urging that Congress give union members "the tools they can use them-

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[8] S. Rept. 187, 86th Cong., 1st Sess. p. 80; Leg. Hist. of the LMRDA, p. 416.

[9] S. 155, Sec. 302; Leg. Hist. of the LMRDA, p. 516.

[10] Leg. Hist. of the LMRDA, p. 1112.

selves" to reform their unions[11]—"the tools with which the unions can be given back to them"[12]—the Senate determined to add such a "Bill of Rights" onto the bill, to provide federal, pre-election protection of the members' democratic rights. The "Bill of Rights" was written and re-written during the Senate's debate, its guarantees becoming more explicit and specific with each re-writing, and the final version of the "Bill of Rights" was approved by the Senate by the overwhelming vote of 77 to 14.[13] Early in the debate, Senator Kennedy contended that State pre-election remedies were adequate,[14] but the Senate overrode that view and guaranteed (in Section 101 of the LMRDA as ultimately adopted) specific federal rights of union members to nominate candidates, to vote in elections, and to express at union meetings their views upon candidates in the union election. A key provision in the "Bill of Rights" as adopted (now Section 102 of the LMRDA) made the members' electoral rights enforceable by pre-election suit on the part of the union members themselves. As Senator Kuchel, author of the final version of the "Bill of Rights" explained, "We believe that giving this type of right to the aggrieved employee member himself is in the interest of justice."[15]

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[11] Leg. Hist. of the LMRDA, p. 1103.

[12] Leg. Hist. of the LMRDA, p. 1104.

[13] Leg. Hist. of the LMRDA, p. 1239.

[14] Leg. Hist. of the LMRDA, 1108. Much of Senator Kennedy's argument was based upon the findings reported in an earlier article of Professor Summers. Cf. Leg. Hist. of the LMRDA, p. 1113.

[15] Leg. Hist. of the LMRDA, 1232.

4. The Structure of the LMRDA.

By superimposing the "Bill of Rights of Members of Labor Organizations" upon the Kennedy-Ervin bill (as Title I thereof), the Senate established federal pre-election protection, as well as post-election protection, for union members' democratic rights. Many rights are given both protections. Thus Title I of the LMRDA (the "Bill of Rights" title) guarantees to every member of a labor organization the rights to nominate candidates, to vote in elections of the labor organization,[16] and to express at meetings of the labor organization his views upon candidates in an election of the labor organization.[17] The exercise of these (Title I) rights is further protected against disciplinary reprisal by Section 609.[18] And, of course, pre-election relief for any infringement of these rights is available pursuant to Section 102 of the LMRDA.[19]

These very same rights are also guaranteed to every member of a union in good standing by Section 401(e) of the LMRDA,[20] and post-election relief for infringement of them is made available by Section 402.[21] Moreover, Section 401(e) also guarantees the exercise of these rights against disciplinary reprisal: it provides that every member in good standing shall have

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[16] Section 101(a)(1), 29 USC 411(a)(1).

[17] Section 101(a)(2), 29 USC 411(a)(2).

[18] 29 USC 529. *Cf. Salzhandler* v. *Caputo*, 2d Cir. 1963, 316 F.2d 445, cert. den. 375 US 476.

[19] 29 USC 412.

[20] 29 USC 481(e).

[21] 29 USC 482.

"the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

Quite obviously, the guarantees of Sections 101(a)(1) and (2) "overlap" those of Section 401(e), and vice versa. The two sets of guarantees complement each other—pre-election relief is available to remedy rights guaranteed in Section 101, while post-election relief is available to remedy the same rights as guaranteed in Section 401.

5. Petitioner's "Insulation" Argument.

It is the contention of petitioner District No. 1, on the other hand, that Section 101 and Section 401 contradict each other. Petitioner advances a rigid, compartmentalized view of the LMRDA, according to which the subject matter of each democratic right would be "insulated" by one or the other of the two sections. Either the right, say, to vote is the private property of Section 101—or it is the private property of Section 401. And all trespassers are warned to keep off.

This view of petitioner's raises some interesting questions. By which title would, say, the right to express views in support of a candidate be "insulated?" Can that right be protected in advance of an election by a member's suit, pursuant to Sections 102 and 609, or must the member whose right has been infringed wait until after the election is completed and then seek to have the election results

set aside? The thrust of petitioner's argument would suggest that the subject matter of that right also is "insulated" by Section 401(e)—and that the protections which Sections 102 and 609 appear to provide with regard to it are in fact nullities.

Curiously, petitioner offers no substantial reasons to explain why it should not be the other way around —why the subject matter of all rights guaranteed by Section 101 should not be the "private property" of Section 101, thus rendering most of Section 401(e) a nullity. But obviously this possibility does not serve the present interests of petitioner's incumbent officials, so they avoid adverting to it.[22]

The correct view, however, is that Congress did not intend to make any right the "private property" of

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[22] An additional reason may be petitioner's (and the amicus, AFL-CIO's) apparent assumption that the Secretary of Labor, the official charged with enforcing Title IV of the LMRDA, is politically captive to the union bureaucracy. That this assumption may have substance is suggested by the Secretary's behavior involving the 1963 elections of National MEBA (with which petitioner is affiliated). National imposes precisely the same nominations and eligibility requirements with regard to its offices as District No. 1 imposes with regard to its presidency: i.e., no member may nominate a candidate other than himself for any National office, and no member who has not already served as a full-time, paid official may be a candidate for any National office (Rec. 43). Three members of National, including the unsalaried Treasurer of the former New York Local 33 (whose nomination of himself for Secretary-Treasurer of National had been rejected on the ground that his had not been a full-time, paid office), complained to the Secretary concerning the imposition of these requirements in the 1963 National election. The Secretary refused, however (without offering any intelligible reasons for his refusal), to carry out his mandate under Section 402 of the Act. Instead, the Secretary brought suit with regard to the maverick Pacific Coast District of the union (cf. page 8 of the brief of the United States). One is forced to conjecture as to the reasons for his choice.

any one section or title of the LMRDA. Congress intended by Title IV of the LMRDA to provide post-election protection for certain democratic rights of union members, and it intended by Title I to provide pre-election protection for many of the same rights. The good sense of Congress's intent is so patently obvious as to reduce petitioner's "insulation" argument to absurdity.

POINT III

The right to nominate candidates includes the right to nominate candidates who will be accorded recognition as candidates.

Supplementary to its "insulation" argument, petitioner District No. 1 advances the notion that respondents weren't *really* deprived of their rights to nominate candidates. Respondents, petitioner says, were allowed to make nominations (of themselves); "It was only after they exercised their equal right of nomination," says petitioner, "that the eligibility rules of the Union came into play. . . ."[23] Those eligibility rules, of course, barred respondents from being candidates—and since District No. 1's nominations requirements prohibited respondents from nominating any candidates other than themselves, respondents were thus barred from nominating *any* candidates at all.

Not all members of District No. 1 were so-barred. The incumbent full-time, paid-officials were permitted to nominate themselves for office—even for the presi-

[23] Petitioner's brief, page 32.

dency of District No. 1. In this union, it would seem, some members are more equal than others.

Petitioner's denial that there has been an infringement is preposterous. This Court has held that a voter is oppressed in the exercise of his right to vote when his ballot (after he has cast it) is subjected to a fraudulent miscount, or when the ballot box is stuffed.[24] The rights to have one's vote counted—and to have one's nomination accepted and the nominee recognized as a candidate—are entitled to as much dignity as the right to drop a ballot in a box or to mail a nominations form in to the union headquarters.[25]

At the barest minimum, respondents were and are entitled to nominate *some* candidate who will be recognized as a candidate. If the right to nominate candidates means anything at all, it must mean at least that. But that is precisely what was denied and what is denied to respondents (and to most other rank-and-file members of District No. 1).

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[24] *United States* v. *Mosely*, 238 U.S. 383; *United States* v. *Saylor*, 322 U.S. 385. Compare: *Beckman* v. *Local No. 46*, 7th Cir. 1963, 314 F. 2d 848.

[25] *Gray* v. *Sanders*, 372 U.S. 368, 380. And Cf. *Gurton* v. *Manuti*, S.D.N.Y. 1964, 56 LRRM 2307 (n/o/r).

Conclusion

Respondents' complaint properly alleges that their rights to nominate candidates are infringed by various provisions in the bylaws and constitution governing petitioner District No. 1, and sets forth a claim for relief pursuant to Section 102 of the LMRDA. For that reason, the Second Circuit Court of Appeals was correct in ruling that the district court had jurisdiction over the cause, and in thereby reversing dismissal for want of jurisdictioin and remanding for further proceedings.

The judgment of the Second Circuit Court of Appeals should be affirmed.

Respectfully submitted

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